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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 169th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.169/Add.1.

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORT SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cyprus (CAT/C/16/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Macris, Mr. Stavrinakis and Mrs. Markides (Cyprus) took seats at the Committee table.

2. Mr. STAVRINAKIS (Cyprus) thanked the Committee for its comments on his country's report. He would do his best to answer the very pertinent questions put to him at the preceding meeting, starting with those of Mr. Burns, who had asked how judges were appointed in Cyprus. The members of the Supreme Court were appointed by the President of the Republic on the recommendation of the Supreme Court. They retired at age 68. The members of the lower courts were appointed by the Supreme Council of the Judicature, composed primarily of Supreme Court judges; they retired at age 60. Judges in both categories could be removed from office only on the ground of misconduct and only by the body which had appointed them.

3. A provision of the Constitution enabled the Government to promulgate laws on the detention of alcoholics, drug addicts and persons suffering from infectious diseases. At present, there was an act on the internment of mental patients as well as an act providing for certain preventive measures in the case of detainees suffering from infectious diseases. He was not in a position to provide details on the contents of those texts, but they would be supplied in the next report of Cyprus. The Act on the internment of mental patients was currently under review. At present, it provided that mental patients could be interned only by court order and for an indefinite period. The patients in question could, however, be released on parole if their condition improved; they could also submit a request to the competent authorities for the annulment of the decision to intern them. Once the Act had been updated, it would be possible to order the internment of mental patients only for a definite period. If at the end of the period the patient was not in a fit state to be released, a request for the extension of the measure could be made to the courts. The new provision was still being discussed. In the case of mentally disturbed offenders or, in other words, persons who had committed an offence and had been found guilty, but not responsible for their actions, the decision to intern was taken on the recommendation of the Council of Ministers. Another category of persons whose temporary internment could be ordered by the courts was that of persons momentarily incapable of being present at their trial, which would take place only when their condition had improved. Such cases were very rare.

4. Mr. Burns had asked what was meant by the statement that some of the provisions of conventions in force in Cyprus were "by their very nature self-executing" (CAT/C/16/Add.2, para. 12). It was true that that term was not easy to explain; to a large extent, it was a matter of interpretation. In any event, there was nothing in Cypriot law to prevent the legislator from promulgating laws reaffirming the provisions of a convention, whether or not they were self-executing. That was in no way contradictory. A decision to adopt a law confirming certain provisions of a convention was usually taken

for the sake of clarity. In extradition cases, for example, it might be useful to avoid any ambiguity by expressly including certain provisions of international instruments in domestic law, even though they already had force of law in Cyprus.

5. The powers of the Prisons' Council were set forth in the Prisons Law. Its members were appointed by the Council of Ministers for a period of three years. Their duties and powers were somewhat ill-defined; they inspected prisons, inquired into the living conditions of detainees and received their complaints concerning matters of all kinds, including the justification for or the severity of disciplinary measures taken by the governor of the prison. To date, the Prisons' Council had not had to deal with any complaints of torture or ill-treatment. It should be noted that the Prisons Law and Regulations were at an advanced stage of revision which would help to define the role of the Prisons' Council more clearly.

6. Mr. Burns had asked for information on what happened if an official refused to obey orders by his superior officers which he thought were illegal. In most cases, the official was not a lawyer and could not always be sure that the act in question was unlawful. He could then refuse to carry out the order and bring the matter to the attention of his superior officer, who would have to refer the matter to the Attorney-General of the Republic for a decision on the lawfulness of the order given. If the Attorney-General took the view that the order was in conformity with the law, the official would have to carry it out.

7. It had been asked whether, in the event of the proclamation of a state of emergency, the provisions of the Convention continued to be fully applicable. Article 33 of the Cyprus Constitution did not permit any relaxation in the protection of fundamental human rights in the event of a state of emergency save to the extent permitted by each right declared in the Constitution. Torture, a flagrant violation of human rights, was therefore prohibited even if a state of emergency was in force.

8. It had been asked whether doctors, health officers and law enforcement officials received any training in the field of torture prevention. Until a recent period, Cyprus had not had a single expert in forensic medicine. Recently, however, a doctor had been sent abroad to acquire the necessary diplomas in that discipline. It appeared that he had completed his studies and would shortly return to Cyprus; it would then be possible to offer training to the officials concerned and to teach them, for example, to identify signs of ill-treatment on persons alleging that they had been tortured. As for sensitizing law enforcement officials to the problem of torture, regular training was provided, for example, at the police college; lecturers included the Deputy Attorney-General, Supreme Court judges and district court judges. The staff of psychiatric hospitals was also trained, although less systematically. Military authorities were also required to provide such training.

9. The question had been asked whether private prosecutions received the same treatment as official ones. The only difference between the two was that, in the case of private prosecutions, the proceedings were not instituted by the police or the Attorney-General. Once the judge had decided that the

prosecution was admissible, proceedings were instituted in the normal way on behalf of the persons bringing the suit and under the Attorney-General's supervision. As in all other cases, the Attorney-General, could, of course, exercise his right to refuse to prosecute.

10. A complete revision of Prisons Regulations was currently under way, but the Regulations as a whole were not reviewed systematically at regular intervals; if it appeared, however, that a particular aspect needed amending, that could be done at any time.

11. One of the reasons which had induced the Council of Ministers to set up a Commission of Inquiry was the report prepared by the European Committee for the Prevention of Torture of the Council of Europe; the period which the Commission of Inquiry was required to cover was, in fact, the same as that covered by the European Committee for the Prevention of Torture. The Commission of Inquiry was mandated to carry out a thorough investigation of methods used by the police in the arrest, detention and interrogation of suspects, especially where there had been allegations of ill-treatment. Complaints had been filed in September or October 1993 and the Commission had opened an inquiry in mid-October 1993; that inquiry was in progress and, in accordance with the observations and recommendations contained in the report of the European Committee for the Prevention of Torture, any action would have to await the Commission's report and recommendations. The police and other services concerned were, however, already thinking about the measures that would have to be taken.

12. The Vassiliu case to which reference had been made was not the same as the case mentioned in the report in connection with the trial of two police officers. That was a different case, in respect of which an investigation had been conducted and in which the file had been forwarded to the Attorney-General, who had requested that proceedings should be instituted against the police officers concerned. He was not in a position to provide more details on that case.

13. Jury trials did not exist in Cyprus because the country was too small for it to be possible to select jurors in a satisfactory manner. Justice was administered by highly competent judges. If the maximum penalty for the offence committed was not more than three years' imprisonment, the offence was tried by a single judge; more serious cases were brought before an assize court composed of three judges.

14. In connection with paragraph 44 of the report, it had been asked whether detainees were held in prisons or in police stations. That depended on the length of the prison sentence and the place where the detainee happened to be. The only central prison in Cyprus was in Nicosia. If a person had been arrested and had to be interrogated 250 kilometres away, holding him in the central prison would involve too many problems.

15. Replying to a question raised by Mr. El Ibrashi, he said that, prior to 1963, there had been two higher courts, the Supreme Constitutional Court and the High Court; in the interests of impartiality, their presidents were

not supposed to be nationals of Cyprus, Greece, Turkey or the United Kingdom. After the events of 1963, the two courts had been merged. Some of the judges on what was now the Supreme Court also acted as appeals judges.

16. The post of Law Commissioner had been created by an administrative act, not a legislative one. The holder of the post was entrusted with revising, consolidating, translating, updating and simplifying legislative acts and generally ensuring that they were easy to read. He also chaired various ad hoc committees set up to review legislative texts in a specific area, such as civil aviation.

17. With regard to the role played by non-governmental organizations in drafting legislation, he said that interested non-governmental organizations were invited to state their views and make suggestions when a draft law or regulation was in preparation. For example, the House of Representatives had given a hearing to an organization concerned with defending the rights of the mentally handicapped and, on another occasion, it had heard associations whose activities related to violence within the family.

18. The Commissioner for Administration or ombudsman was appointed by the President of the Republic subject to approval by a two-thirds majority of the House of Representatives. His term of office was six years. Detailed information about his activities would be provided in the next report.

19. The special investigator did the same work as a police investigator, but was not himself a member of the police force. He was appointed to conduct an inquiry in cases involving the police force or one of its members. Accordingly, there was not just one special investigator, but several, as required.

20. Mr. Ben Ammar had expressed surprise at the use of the term "Ministry of Justice and Public Order". In point of fact, the Minister of Justice dealt exclusively with the material aspects of courts and prisons and had no responsibilities with regard to the administration of justice, the appointment and promotion of judges or the registering of complaints relating to the administration of justice. Recently, the Ministry had also been placed in charge of public order or, in other words, of supervising the police force and law enforcement agencies, and that explained its name.

21. With regard to the complaints examined by the complaints committees referred to in paragraph 89 of the report, he regretted that he was unable to provide detailed information on current cases or their outcome. Information on that point would be included in the next report.

22. A member of the Committee had been surprised to read in paragraphs 96 and 97 of the report that the court "may" give directions for the investigation of a complaint alleging torture or ill-treatment and that an investigation of a complaint of ill-treatment "may" be directed by a court during a trial if the accused claimed that his confession had been obtained by torture or ill-treatment. The use of the word "may" in the report meant only that the power of the courts was discretionary; in fact, an investigation was always ordered in such cases.

23. Referring to the separation of powers, he said that Cyprus had a presidential regime. The members of the Council of Ministers were not elected, but appointed by the President. The House of Representatives was completely independent of both the executive and the judiciary. The only link between the executive and the judiciary was the fact that judges of the Supreme Court were appointed by the President of the Republic; the appointments were made one by one as posts fell vacant. That usually meant that members of the Supreme Court were appointed by different Presidents. Once appointed, judges were not answerable to the President in office.

24. The Attorney-General was an independent official appointed by the President of the Republic and could remain in office until the age of 68. His role was to act as legal adviser to the Government and to institute criminal proceedings. He could not be removed from office except on grounds of professional misconduct.

25. On the subject of the death penalty, he said that there was no conflict between the Constitution and the law, since the law gave effect to the principles embodied in the Constitution. Article 7 of the Constitution stated that a law could provide for the death penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law. It should be noted that the death penalty was carried out by hanging. The last execution had taken place in 1963. Law No. 86 of 1983 had abolished the death penalty for premeditated murder and had replaced it by life imprisonment. Courts could also pronounce the maximum sentence of life imprisonment for very serious crimes such as rape or drug trafficking. The law did not define a minimum penalty. There was also a system for the reduction of penalties based on the length of the sentence, the number of years already served and the prisoner's behaviour. It was possible for a person sentenced to life imprisonment to serve only 20 or even 10 years in prison.

26. The Chairman of the Committee had asked whether the Convention against Torture was subject to reciprocity in Cyprus. Reciprocity was a prerequisite for cooperation, for example, in respect of evidence or extradition. Otherwise, there was no reciprocity except with States parties to the Convention.

27. A member of the Committee had asked how the compensation awarded in cases of torture was calculated and had wanted to know whether a case of ill-treatment was treated differently from others. He recalled that damages were awarded and determined by civil courts rather than by criminal courts. The victim could bring an action in the civil courts without waiting for the offender's conviction by a criminal court. There was no ceiling for damages, which always corresponded to the actual harm suffered. A distinction was drawn between general damages known at the time of the trial (cost of medical treatment, loss of earnings, etc.) and the special damages which might be awarded later. In the event of the victim's death, damages were awarded to his dependants and took account of losses incurred as a result of the victim's death. A recent amendment of the law added certain members of the extended family to the class of dependants which had previously included only the victim's children and spouse.

28. A question had also been asked about corporal punishment. Such punishment in educational establishments had been abolished by a special law. He expressed the hope that he had answered all the Committee's questions and undertook to provide more detailed information on certain laws in writing.

29. The CHAIRMAN asked the members of the Committee whether they had any further questions.

30. Mr. DIPANDA MOUELLE said that he wished to know whether there was only one Attorney-General in the Cypriot judicial system and to which court he was attached.

31. Mr. STAVRINAKIS (Cyprus) said that Cyprus had an Attorney-General and a Deputy-Attorney-General. The Attorney-General had the same rank as the President of the Supreme Court.

32. The delegation of Cyprus withdrew.

33. The public part of the meeting was suspended at 4.40 p.m. so that the draft conclusions and recommendations on the initial report of Cyprus could be considered in closed session; it resumed at 5.10 p.m.

Initial report of Cyprus (CAT/C/16/Add.2): conclusions of the Committee

34. At the invitation of the Chairman, the delegation of Cyprus took seats at the Committee table.

35. Mr. BURNS read out to the Committee the following conclusions on the report of Cyprus which had been adopted after consideration in the closed part of the meeting:

"1. Introduction

The report of Cyprus was considered by the Committee at its 168th and 169th meetings on 17 November 1993. The report was due on 16 August 1992 and was received on 23 June 1993. In all respects, the report meets the guidelines of the Committee and the Committee compliments Cyprus for the comprehensive and detailed information provided.

2. Positive aspects

The Committee feels that Cyprus has a very advanced legislative and administrative scheme for the implementation of human rights values contained in international instruments.

In this regard, the Committee notes with satisfaction the proposed amendment to the ombudsman's jurisdiction granting him clear authority to investigate and report on human rights violations.

Legal protection of basic rights is also apparent in the constitutional provisions of Cyprus.

3. Factors and difficulties affecting implementation of the Convention

There seem to be no structural or legal impediments to full implementation of the Convention. On the contrary, the legal, legislative and administrative framework is most comprehensive and probably as good as the most advanced anywhere.

4. Principal subjects of concern

Casual brutality by police officers has been reported, particularly in Limassol Police Station.

This may reveal a lack of professionalism which if not dealt with strictly could, in a small country with a fairly homogenous culture, take a firm hold on police practices.

The Committee notes, though, the response of the authorities in prosecuting two officers on charges of torture and the decision of President Clerides to ask the Council of Ministers to set up a Commission of Inquiry into the reported draft conclusions of the European Committee for the Prevention of Torture. The Committee notes also that this Commission of Inquiry has been set up and is engaged in its inquiries.

5. Recommendations

The legal and administrative constructs in Cyprus need no changes. But two recommendations could be made:

(a) When complaints committees are set up to examine questions of police brutality that may contravene our Convention against Torture, a great effort should be made to ensure that their composition cannot be criticized on the basis of real or perceived partiality.

(b) It is sometimes very difficult for small, homogenous States to change institutional attitudes and practices without creating the risk of strong reaction.

Very often it is useful to utilize an external agency for this catalytic role. Quite obviously, the police not only need to be disciplined and prosecuted for any unlawful conduct, but a real attempt must be made properly to internalize their attitudes towards the human rights values that they must respect in their everyday activities.

In this regard, as well as the emphasis in their police training, the Advisory Services of the Human Rights Centre are ready to assist in the educational and re-educational mission. A joint initiative between that body and the Government of Cyprus, with appropriate attendant publicity, may go some way towards affecting police attitudes.

(c) The requirement of reciprocity in Conventions even in the limited sense that you opined in the answer to the Chairman is somewhat cryptic and this could be revisited in the periodic report and clarified.

(d) The Committee also likes to receive answers to its unanswered questions.

(e) The Committee wishes to express its appreciation to Cyprus for its comprehensive report and obvious willingness to deal with the questions raised by the members of the Committee itself."

36. Mr. STAVRINAKIS (Cyprus) assured the members of the Committee that his Government would do everything necessary in order to bring Cypriot legislation into line with the provisions of the Convention and would provide answers to the questions still outstanding.

37. The CHAIRMAN thanked the delegation of Cyprus.

The meeting rose at 5.20 p.m.